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2012 OCT 15 PH 5: 02

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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 12L-20
DATE RECEIVED: April 25, 2012
DATE ACTIVATED: August 16, 2012

EARLIEST SOL: October 15, 2014
LATEST SOL: December 2, 2015

SOURCE: Internally Generated

RESPONDENTS: Carney for Congress and
Christopher P. Carney in his official
capacity as treasurer¹

RELEVANT STATUTE(S): 2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Carney for Congress and its treasurer in his official capacity (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose receipts of \$5,103.15 and disbursements of \$273,170.63, which constitute an aggregate increase in activity of \$278,273.78. Between October 2009 and December 2010, the Committee filed four incomplete disclosure reports with the Commission, including two electitn sensitive reports. The Committee has asserted that the reporting discrepancies mainly resulted from the former treasurer's serious illness, which prevented him from closely supervising report preparation.

¹ Larry Golden was the Committee's treasurer when RAD referred this matter to OGC. Thereafter, Golden resigned as treasurer and directed that further communications be directed to Carney. See Letter from Larry Golden to FEC (June 14, 2012). Christopher P. Carney is the currently designated as the Committee's representative. Thus, we have substituted Carney for Golden as a Respondent in this matter. See *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (Jan. 3, 2005).

Based on the available information, we recommend that the Commission open a matter under review ("MUR") and find reason to believe that the Committee violated 2 U.S.C. § 434(b) because it failed to accurately disclose receipts and disbursements in reports to the Commission. We also recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL & LEGAL ANALYSIS

A. Factual Summary

The Committee is the principal campaign committee of Christopher P. Carney, who was a candidate for the U.S. House of Representatives from Pennsylvania's 10th Congressional District during the 2010 election cycle.² The Committee timely filed its 2009 October Quarterly, 2010 October Quarterly, 2010 12-Day Pre-General, and 2010 30-Day Post-General but later filed several amendments that disclosed additional activity not included in the original reports. Those amendments are shown in the chart below:

² Carney lost the 2010 general election, but on October 13, 2010, he filed a Statement of Candidacy (FEC Form 2) seeking the same office during the 2012 election cycle.

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Report ³	Date(s) of Amendment	Increased Receipts	Increased Disbursements	Total
2009 October Quarterly	January 6, 2011	\$4,000.00	---	\$4,000.00
2010 October Quarterly	December 20, 2010	---	\$17,628.51	\$17,628.51
2010 12-Day Pre-General	December 20, 2010	---	\$125,489.76	\$125,489.76
2010 30-Day Post-General	December 20, 2010 January 4, 2011 ⁴	\$1,103.15	\$130,052.36	\$131,155.51
	TOTAL	\$5,103.15	\$273,170.63	\$278,273.78

1 When it filed each of the amended reports listed above, the Committee included a memorandum
2 page with the same explanation for the amendments: "[T]here appears to be an error in our
3 Cash-on-Hand calculation. Mostly [sic] likely this is caused by invoices not recorded in our
4 database" Amended 2009 October Quarterly Report at 2 (filed Jan. 6, 2011); Amended
5 2010 October Quarterly Report at 2 (filed Dec. 20, 2010); Amended 2010 12-Day Pre-General
6 Report at 2 (filed Dec. 20, 2010); Amended 30-Day Post-General Report at 2 (filed Jan. 4, 2011).
7 Later, in response to RAD's Requests for Additional Information, the Committee contacted RAD
8 by telephone and indicated that it had nothing to add to its earlier explanation.

9 , Mem. from Patricia Carmona, Chief Compliance Officer, FEC, to
10 Anthony Herman, Gen. Counsel, FEC, Attach. 5 (Apr. 25, 2012).

11 On April 25, 2012, RAD referred the Committee to OGC based on the Committee's
12 failure to disclose receipts totaling \$5,103.15 and disbursements totaling \$273,170.63. See Mem.
13 from Patricia Carmona, Chief Compliance Officer, FEC, to Anthony Herman, Gen. Counsel,

³ The Committee's 2010 October Quarterly Report and 2010 12-Day Pre-General Report are election sensitive under 11 C.F.R. § 111.43(d)(1).

⁴ On December 2, 2010, Golden informed RAD that the 30-Day Post-General Report he was about to file may not be complete. See Referral, Attach. 5. The Committee filed an amended report 18 days later that disclosed additional receipts totaling \$860.15 and additional disbursements totaling \$129,809.36. A further amendment on January 4, 2011 disclosed \$243 in additional receipts and \$243 in additional disbursements beyond those disclosed in the December 20, 2010 amended report.

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1 FEC (Apr. 25, 2012) (the "Referral"). RAD made the Referral under its 2011-2012 Review and
2 Referral Procedures, which established a new threshold for referring cases involving aggregate
3 increases or decreases in activity exceeding based on amendments to reports received
4 during the current election cycle and covering activity from the current election cycle, the
5 previous election cycle, or both.⁵ *See Reports Analysis Division Review and Referral*
6 *Procedures for Authorized Committees for 2011-2012 Election Cycle 75* (approved by Comm'n
7 Apr. 5, 2011).

8 On May 2, 2012, OGC notified the Committee about this matter, provided a copy of the
9 Referral, and invited the Committee to provide a written submission. *See Agency Procedure for*
10 *Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38617 (Aug. 4,
11 2009).

12 On July 2, 2012, Golden submitted a response to the Referral on behalf of the Committee.
13 *See* Letter from Larry Golden, former Treasurer, Carney for Congress, to Jeff S. Jordan,
14 Supervising Att'y, FEC (July 2, 2012). First, he explained that the \$4,000 increase in receipts
15 associated with the 2009 October Quarterly Report was "due to receipt of a check lost in the mail
16 as noted in the filing."⁶ Second, as for the other reports, Golden explained that in October 2010,
17 that prevented him from providing
18 "close day-to-day supervision." As a result, he explained, the 2010 reports at issue omitted some
19 contributions and some disbursements relating to several invoices for television advertising.

⁵ Although it added this new threshold, the Commission also retained the previously established policy of referring cases to OGC for review when amendments meets the following criteria: (i) they are filed at least days after the original report; (ii) they disclose an increase or decrease of more than in receipts, disbursements, or debts; and (iii) for election sensitive reports, they are in excess of or for non-election sensitive reports, they are in excess. *See Reports Analysis Division Review and Referral Procedures for Authorized Committees for 2011-2012 Election Cycle 75-76* (approved by Comm'n Apr. 5, 2011).

⁶ Schedule A of the January 6, 2011 amendment discloses two contributions in the amounts of \$3,000 and \$1,000, respectively, from Jared Polis Victory Fund. The entries are both dated September 30, 2009 and the \$1,000 contribution includes a notation "Replacement of lost check #1055 from 9/30/09." 2009 Oct. Quarterly Report, Schedule A (Itemized Receipts) at 70/94 (Jan. 6, 2011).

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1 Finally, Golden asserted that he resigned as the Committee's treasurer on January 10, 2012, and
2 believed Carney would notify the Commission and appoint a new treasurer. Golden stated that
3 when he received notice of the Referral, he discovered that Carney had not notified the
4 Commission of Golden's resignation, so Golden sent his own letter of resignation followed by a
5 response to the Referral.⁷

6 **B. Legal Analysis**

7 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
8 treasurers to file reports of receipts and disbursements according to the requirements of 2 U.S.C.
9 § 434. See 2 U.S.C. §§ 434(a)(2); 11 C.F.R. §§ 104.1(a). These reports must contain, *inter alia*,
10 the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The
11 Act also requires committees to disclose itemized breakdowns of receipts and disbursements,
12 including the disclosure of the name and address of each person who has made any contributions
13 or received any disbursements in an aggregate amount or value greater than \$200 within the
14 calendar year, together with the date and amount of any such contribution or disbursement. See
15 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4), (b)(2), (b)(4).

16 Here, the Committee did not comply with the Act's reporting requirements because it
17 failed to disclose \$5,103.15 in receipts and \$273,170.63 in disbursements on the four original
18 reports listed above. We therefore recommend the Commission find reason to believe that the
19 Committee violated 2 U.S.C. § 434(b).

⁷ In his June 14, 2012 resignation letter to the Commission, Golden claimed that he notified the Commission by telephone shortly after he resigned on January 10, 2012.

Because Golden formally resigned as the Committee's treasurer after receiving notice of the Referral, OGC communicated with Carney, Golden's replacement, to ensure that he also received notice of the Referral. In response, Carney explained that he understood "Larry Golden is working with you to sort out this issue." E-mail from Christopher Carney, Treasurer, Carney for Congress, to Donna Rawls, Paralegal Specialist, FEC (June 25, 2012, 01:47 EDT). Accordingly, even though Golden no longer was acting as treasurer on behalf of the Committee, OGC construed Golden's July 2 letter to be a response on behalf of the Committee.

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IV. RECOMMENDATIONS

1. Open a MUR in RR 12L-20.
2. Find reason to believe that Carney for Congress and Christopher P. Carney in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Carney for Congress and Christopher P. Carney in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.
6. Approve the appropriate letters.

Anthony Herman
General Counsel

Daniel A. Petalas
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Dated: 10-15-12

BY:

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